IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 822 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

SARDARBHAI MANJIBHAI PATEL

Appearance:

1. Criminal Appeal No. 822 of 1985

MR MA BUKHARI ADDL PUBLIC PROSECUTOR for Petitioner No. 1

MS KUSUM M SHAH for Petitioner No. 1

MR KJ SHETHNA for Respondent No. 1-15

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 30/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

#. The State Government has preferred this appeal challenging the judgment and order dated 28th May, 1995 passed in Sessions Case No.75 / 1984 by the learned Sessions Judge, Banaskantha at Palanpur acquitting the respondents accused for the offence punishable under Section 147, 148, 392-149, 302 and 34 of the IPC and under Section 37 [1] and under Section 135 of the Bombay Police Act.

#. The incident in question had taken place on 18th July, 1984 at about 1.30 A.M. at village Bhutedi of Palanpur Taluka near quarter of Gram Sevak, where all the accused armed with weapons like axe, Dhariya, spade and stick assaulted Gova Deva and Rama Deva, with the result, they sustained serious injuries. The incident was witnessed by informant Mashru Deva - PW-3, Mafa Deva PW-6, Jiva Deva - PW-7, Punjiben - PW-8, Sartan Jiva PW-16 and Khema Chela - PW-3. Both the injured were taken in camel cart to Civil Hospital, Palanpur at 3.20 A.M. where they were treated by Medical Officer Dr.Narendra Shah - PW-2. Rama Deva succumbed to injuries in the hospital at 5.40 A.M. while Gova Deava died at 10.45 A.M. In the mean time, the informant Mashru Deva had gone to Palanpur Police Station and lodged complaint which was recorded by PSO Shri Kantilal Joshi - PW-18. PSI Shri D.K.Vankar PW-19 started usual investigation thereafter. After completion of the investigation, he submitted a chargesheet before the learned Chief Judicial Magistrate, Palanpur who in turn committed the case to the Sessions Court for trial as the offence involved, is exclusively triable by the Sessions Court.

The learned Sessions Judge framed a charge Exh.3 and the accused pleaded not guilty and in defence, the accused pleaded for trial. The defence of the accused was of total denial. The learned Trial Judge after considering the oral as well as documentary evidence on record, including further statement of the accused recorded finding that prosecution has failed to establish the charge levelled against the accused beyond reasonable doubt. He therefore acquitted all the accused by giving benefit of doubt, hence the present Appeal.

#. Learned APP Mr.M.A.Bukhari after taking us to evidence on record submitted that the trial court has committed error in acquitting the accused by not properly considering evidence of eye witnesses. The other submission of learned APP Mr.Bukhari is that the accused were known to the witnesses and especially when PWs have

given all the details regarding weapons used by the accused in committing the offence, there is no reason to reject their evidence. He further submitted that learned trial Judge has given undue importance to the presence of light near the scene of offence. Finally, he submitted that the incident had commenced at the Osari of the quarter of Gram Sevak and completed outside the quarter and therefore, there is no question of changing the scene of offence as observed by the learned Trial Judge. In the submission of learned APP Mr.Bukhari, PWs have remained consistent with their say that they saw the incident taken place out side the quarter in view of the fact that when they reached the scene of offence, the accused and the deceased have already come out from Osari outside quarter. Therefore, there was no occasion for PWs to see initiation of the incident. Learned APP Mr.Bukhari submitted that the appeal is required to be allowed.

Learned advocate Mr.Adil Mehta appearing for the accused, on the other hand, submits that the judgment of the trial court is just and proper.

#. The prosecution in order to prove the charge levelled against the accused placed reliance on the evidence of the eye witnesses, the informant Mashru Deva PW-3 Exh.35, Mafa Deva Exh.39, Jiva Deva Exh-41, Punjiben - wife of the deceased Gova Deva PW-8 Exh.43 and Sartan Jiva PW-16 Exh.77 and Khena Chela - PW-3. They are eye witnesses in the present case. PW-3, PW-6 and PW-7 are the brothers of the deceased Gova Deva and Rama Deva. PW-8 is wife of deceased Gova Deva, while PW-16 is nephew of both the deceased. PW-3 has not supported the prosecution and was declared hostile by the prosecution and therefore, his evidence will be of no assistance to the prosecution. Thus, all the witnesses are close relatives of both the deceased. In view of this, their evidence requires a close scrutiny.

#. Mashru Deva - PW-3 in his evidence has stated that a month prior to this incident, the accused No.1 has beaten the son of his brother Nagaji with regard to animal. Because of the same, his brother Nagaji has scolded the accused No.1 and as a result, beating between two had taken place and therefore the accused No.1 had filed a complaint against his brother Nagaji and his another brother Gova [Deceased]. Regarding the present incident that when he returned to his house at about 8.00 p.m. from the field, he found his brother Gova and Rama have not returned and therefore, he and his other brothers were waiting for them. At about 1.30 a.m.

police came in vehicle from Palanpur and enquired about Gova and Rama. Their spouse replied that they have gone with cows to village Moti Bhataman for the purpose of metting. The police thereafter took Nagaji and Babaa Mashru with them. The police informed that they were taken in connection with the complaint filed by the accused No.4. He has further stated that he thereafter with other PWs were waiting for Gova and Rama to come. After about half and hour, they had heard shouts from direction of the quarter of Gram Sevak. This witness and PW-6 Mafa Deva thereafter ran towards direction. After reaching there, they saw that both the deceased were surrounded by accused and were praying for their lives. Both the deceased were being beaten by the A-1, A-2, A-3, A-4, A-7 and A-8 and others. According to this witness, A-1, A-3 and A-4 having Axe, A-2 was having Dhariya and A-7 was having spade and A-8 and others were having sticks. According to him, it was about 2.00 a.m.. He has further stated that there was electric pole and light was on. He has also stated that opposite the quarter, there was house of one blacksmith, from there also, light was pouring in. It is also stated that light was also coming from electric bulb of quarter of house of one Dosaji Muraji which is situated at western side of the quarter and from there also light was coming out. He has further stated that he was followed by the ladies and children of the deceased. On seeing that, A-2 and A-3 told that as crowd is coming, let us run. Accordingly, the accused have run towards the house of Sardar Manji with weapons. He had gone to place where deceased were lying and saw that blood was oozing out from them. They sustained injuries on head and legs. Mana Magan thereafter brought camel cart. Both the deceased were taken in camel cart. Thereafter, they gone to Palanpur and reached at about 3.20 a.m. to the hospital. He has further stated that after waiting at the hospital for some time, he has gone to police station and gave complaint at about 5.00 a.m..

Mafa Deva - PW-6 has also supported PW-3. According to him, on hearing the sound, he had also run towards the direction of the quarter of Gram Sevak where he saw fifteen Patels have cornered both the deceased and were beating them. He saw both of them lying on the eastern direction of the quarter. This witness has stated that A-1, A-3 and A-4 were having Axe, A-2 was having Dhariya and A-7 was having spade and A-8 and others were also having sticks. He has further stated that both the deceased praying for their lives and were telling "Don't beat" "Don't beat". He has further stated

that when he reached at the spot, he identified A-1, A-2 and A-15 and thereafter, he identified all other accused. He has further stated that with the help of light in the quarter of Gram Sevak, he identified the accused. He has further stated that there were other lights at the pole near the quarter and from the pole near the house of blacksmith.

Jiva Deva - PW-7 has also more or less supported the complaint. He had also gone to the quarter of Gram Sevak at about 1.30 a.m. with his son Sartan - PW-16. He identified A-2, A-5, A-9, A-12 and A-13 out of fifteen accused. According to him, he identified those accused whey they were returning after commiting the offence. According to him, A-1, A-3 and A-4 were having Axe, A-2 was having Dhariya and A-7 was having spade and A-8 and others were also having sticks. He has also stated that light was coming out from Osari of quarter of Gram Sevak and from the electric pole situated behind the quarter. He has also stated that light was also there on the pole situated near the house of one Panchal.

Sartan Jiva - PW-16 in his evidence has also stated that on reaching to the spot of offence, he saw accused were beating both the deceased. According to him, A-1, A-3 and A-4 were having Axe, A-2 was having Dhariya and A-7 was having spade and A-8 and others were also having sticks and they were beating both the deceased. Even according to him, the incident was witnessed from the light of the electric pole situated behind the quarter of Gram Sevak.

Punjiben - wife of deceased Gova Jiva - PW-8 also reached at the spot on hearing the shouts. In her evidence, she involved A-1, A-2, A-3, A-4, A-7 and A-14 in the commission of offence. According to her, A-1 was having Axe, A-2 was having Dhariya and A-7 was having spade, A-4 was having Axe while A-14 was having stick, whereas the remaining accused were also having sticks. She has also stated that light in the quarter of Gram Sevak was on and not only that but there was also moon light. Even lights were also on in the office of the Panchayat, besides there was electric pole, therefrom also, light was coming out.

#. From the aforesaid evidence, the prosecution has tried to establish that there was sufficient light at the time of incident and therefore, the incident was witnessed by all the PWs. As submitted by the learned

APP Mr.Bukhari that since all the accused were residents of the same village where PWs are staying and therefore, they were known to PWs and with the help of lights near the scene of offence, they were duly identified by the PWs. Our attention is invited to decisions of the Supreme Court rendered in case of MACHHI SINGH V. STATE OF PUNJAB reported in AIR 1983 SC 957 and MOHAN SINGH VS. STATE OF M.P. reported in 1999 [2] SCC 428. In MACCHI SINGH case, the witnesses identified the culprits in the light shed by lantens. The Apex Court appreciating their evidence observed that "the villagers living in villages where electricity has not reached as yet, get accustomed to seeing the things in the light shed by the lantens. Their eyesight gets conditioned and becomes accustomed to the situation. Their powers of seeing are therefore not diminished by the circumstances that the incident is witnesses in the light shed by the lantens and not electric light."

In MOHAN SINGH case, PWs identified accused who were not only known but also closely related in moon light with light of the lanten. Under the circumstances, the Supreme Court held that their appearance and voices being known, there would be no difficulty for witnesses in recognising the accused persons.

#. We have gone through both the decisions. In the facts of those cases, there was light of lanten and also moon light. The accused were also known to the PWs. Considering the facts and circumstances of the case and after appreciating their evidence, the Apex Court observed as above. As far as the present case is concerned, as stated earlier, the witnesses are close relatives of the deceased. Admittedly, there is enmity between the PWs and the accused as the complaint of beating was filed a month prior to the incident. Therefore, there is every possibility to involve as many accused as possible in the commission of the offence. Even though, the informant Mashru Deva - PW-3 has reached Palanpur Civil Hospital at 3.20 a.m. on the same night and though the police station is just opposite to the hospital, but he filed the complaint at 5.00 a.m., even though both the deceased were accompanied by other PWs. Assuming that the informant being brother of the deceased, was primarily concerned of providing proper treatment to his injured brothers but after admitting the injures brothers in the hospital, he is not expected to wait till 5.00 a.m. to lodge the complaint. Thus, by late filing of the complaint, it cannot be ruled out that this time possibly utilized in involving all the accused in the incident in question. This is clear from the fact

that all the PWs have not made specific allegations against part played by each of the accused in the offence. The informant Mashru Deva PW-3 involves only A-1,2,3, 4, 7 and 8, while PW-6 Mafa Deva involves only A-1, 2, 3, and 15. Similarly, PW-7 Jiva Deva involves A-2, 5, 9, 12 and 13. Likewise, PW-16 Sartan involves only A-1, 2, 3, 4 and 7. It is only PW-8 Punjiben, initially involved A-1,2,3,4,7 and 14, subsequently involves all by making general allegations. Thus, from the evidence of PWs, no specific role is attributed to all the accused and therefore, it becomes clear that all the PWs have deliberately made attempt to involve all the accused with ulterior motive. Even if we accept their evidence, whereby the accused Nos.1, 2, 3, 4, 5, 7, 12, 13 and 15 are involved in the incident, it is clear that A-1,3 and 4 were possessing Axe, while A-2 was having Dhariya and A-7 was having spade and rest of the accused were possessing sticks. Even accepting their evidence that all these accused utilized their weapons by giving indiscriminate blows, in that event, the deceased are bound to receive corresponding injuries.

Dr.Narendra Shah PW-2 at Exh.13, who had examined Rama Deva and had found following injuries;

[1] Central incisor tooth was broken and bleeding found present.

[2] Compound fracture of left leg. Middle part, with bone exposed.

[3] Compound fracture of Rt. leg, upperpart.

[4] C.L.W. on rt. lower leg above ankle, anterior aspect, 2x1 cm.

[5] Contusion on rt. anterior chest wall, 3 in numbers, parallel to each other and in oblique in direction, 6 x 2 cm. 8 x 2 cm. in size, in reddish colour.

[6] C.L.W. on anterior part of inter parietal region, 6 x 1/2 x 1/2 cm.

[7] C.L.W on rt. upper part of parietal region, 8 x 1/2 cm Scalp deep.

[8] C.L.W. on it. posterior upper part of paristal region, 6 x 1/2 cm. scalp deep.

He had also examined Gova and found following

injuries ;

[1] Diffused swelling on the back of both hands.

[2] Contusion on lt. side of face, on upper chin. 4 x 6 cm. in size.

[3] Contusion on rt. side of face, on upper part of check 3 x 6 cm. in size.

[4] C.L.W. on scalp, 3 in numbers, on inter parietal and rt. and lt. parietal region, 8 x 1/2 cm., 6 x 1/2 cm. and 10 x 1/2 cm. scalp deep.

[5] Contusion on rt. shoulder, 8 x 6 cm. in size.

Dr.Narendra Shah who has also performed postmortem on both the deceased, as far as Rama Deva is concerned, has opined that all these injuries are possible by hand and blunt substance. According to him, injuries Nos.1 to 3 and 5 to 8 are grievous and other are simple. Similarly, Dr.Shah, as far as injuries sustained by Gova Deva is concerned, has opined that injuries Nos.1, 2 and 3 are grievous and injuries Nos.5 and 8 are also serious and are others are simple. According to him, all three injuries are sufficient to cause death and these injuries could be possible by hand and blunt substance. In view of the medical evidence on record, it is clear that both the deceased sustained injuries which are possible by hand and blunt substance, in other words, the use of Axe, Spade and Dhariya at the instance of the accused who are possessing them, is absent. However, it is the say of the PWs that they, in fact, saw the beating part when they reached the scene of offence. According to them, both the deceased were praying for their life by saying "Don't beat" "Don't beat". In absence of any specific allegation regarding the use of weapon, number of blows on which part of the body by each of the accused etc, the only conclusion can be drawn is that PWs have not witnessed the incident in question.

#. Even though, it is claimed by the PWs that they witnessed the incident not only with the help of lights from the electric pole situated at the distance of about 30 ft from back portion of the quarter but also light of the surrounding pole situated near the house of blacksmith and also from lights in the Panchayat Office, all the PWs have been contradicted with their police statement about this part of their evidence.

The informant Mashru Deva has admitted in his evidence that he identified the accused with the hlep of lights. He has also admitted that it is not possible to identify without light. He has admitted that he is not sure as to whether he has stated in the complaint that there was light at the Osari of the quarter of the Gram Sevak and that said connection was taken from the house of one Doshaji. He has also admitted that he is not sure as to whether he has stated in the complaint as to whether lights were there near the house of blacksmith. He has also admitted that in his police statement he has stated as to whether he has stated that lights were there in the quarter of Gram Sevak or that said connection was taken from one Dosaji. Suffice it to say that he has not stated above facts regarding presence of light in the complaint as well as in his further statement before the police.

Panchnama of the scene of offence is drawn on 18th July, 1984 between 14.30 Hrs. to 14.40 Hrs., which also does not mention electricity light in the quarter of Gram Sevak. However, it only refers to electric pole situated 30 ft away from the Panchayat house and the bulb placed thereon is in working condition.

Likewise, Mafa Deva PW-6 is also contradicted with his police statement wherein he has not stated that lights near the house of Panchal - a blacksmith on the electric pole was in working condition. Jiva Deva - PW-& is also contradicted with his police statement, in which, he has not stated regarding lights was on on the electric pole near the house of Panchal. In the similar way, Punjiben - PW-8 has also not stated in her police statement regarding light in the Osari in the quarter of Gram Sevak and that she saw accused with the help of light of electric pole situated on the eastern as well as on the northern direction.

#. From the aforesaid contradictions regarding lights near the scene of offence, it is clear that all the witnesses have tried to improve their versions in their evidence which was not there in their police statement , which would make their evidence doubtful and unacceptable. Thus, except light of electric bulb on the pole which is situated at distance of about 30 ft at the back of the quarter of the Gram Sevak, there is practically no evidence regarding presence of light at the time of incident. In view of the fact that incident has taken place initially at the Osari of the quarter as can be seen from the blood recovered from there and later

on in front of the Osari, we have got our own doubt as to whether the incident has been noticed by the witnesses as there could not have been sufficient light, practically a total darkness. In such situation, claim of the witnesses that on hearing the shouts, they reached the spot and thereafter, saw both the deceased surrounded by the accused and were praying for their lives while receiving blows at the hands of the accused and to identify all the accused, especially there is no evidence regarding utterance by any accused except A-2 and A-3 and that too after the incident, when they told other accused let us run, appears to be highly doubtful proposition. Their version of beating is also not supported by the medical evidence. Thus, facts of the present case is clearly distinguishable from the facts of the cases of the Supreme Court sited before us.

Thus, taking overall view of the matter, we are clearly of the opinion that PWs being highly interested witnesses, their evidence is not free from doubt and therefore not acceptable. In our opinion, the learned Trial Judge was justified in rejecting their evidence. Suffice it to say that we are in total agreement with the reasoning of the judgment. Beside this being acquittal appeal, even after reappreciating the evidence on record, we hardly see any reason to interfere with the order of acquittal passed by the learned Trial Judge.

In the result, Appeal fails. There being no substance in this appeal, the same is dismissed. The bail bonds stand cancelled.

[K. R. Vyas, J.]

Date: 30-7-2002 [K.M.Mehta, J.]

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